IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JOSE ANDRES CAZARES, as Special, Administrator of the Estate of ANDREW CAZARES, deceased,	)	
Plaintiff,	)	13 C 5626
v.	)	Judge Kendall
JOSEPH FRUGOLI, et al.,	)	
Defendants.	)	

FAUSTO T. MANZERA, as Special Administrator of the Estate of FAUSTO A. MANZERA, et al.,	)	
Plaintiffs,	)	13 C 5626
v.	)	Judge Kendall
JOSEPH FRUGOLI, et al.,	)	
Defendants.	)	

DEFENDANT CITY OF CHICAGO'S MOTION TO DISMISS

Plaintiff Fausto T. Manzera and Plaintiff Jose Cazares (collectively, "Plaintiffs") have brought separate actions seeking redress for the deaths of their respective decedents. Their deaths allegedly were caused by the negligent conduct of off-duty Chicago police officer Joseph Frugoli ("Frugoli"), when a personal vehicle Frugoli was driving struck a vehicle occupied by Plaintiffs' decedents. Plaintiffs have filed amended complaints that for the first time plead federal claims. In each Complaint, Plaintiffs allege that their decedents' substantive due process right to bodily integrity was violated by various "wrongful acts and/or omissions" of Defendant City of Chicago ("the City"): in other words, Plaintiffs have brought *Monell* claims against the City. It is axiomatic, however, that under Section 1983 "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process."[1] And in the absence of a constitutional violation, there can be no Section 1983 municipal liability.[2] Accordingly, pursuant to Fed. R. Civ. P. 12(b)(6), this Court should dismiss with prejudice the federal claims against the City in both amended complaints, and remand the remaining state law claims to state court.

Background

The present litigation involves two separate lawsuits arising from the same set of underlying facts. On April 10, 2009, a vehicle driven by Frugoli struck a vehicle that was operated by Andrew Cazares ("Cazares") and that carried Fausto A. Manzera ("Manzera") as a passenger.[3] Both Cazares and Manzera were killed as a result of the motor vehicle accident.[4] Plaintiffs allege that at the time of the accident, Frugoli was driving under the influence of alcohol, after he was overserved while he was a patron at Dugan's Tavern in Chicago.[5] Plaintiffs also allege that at the time of the accident, Frugoli was employed as a Chicago police officer and was off-duty.[6]

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[1] *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998) (citations omitted).

[2] *See City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986) ("[N]either *Monell v. New York City Dept. of Social Services* nor any other of our cases authorizes the award of damages against a municipal corporation based on the actions of one of its officers when in fact the jury has concluded that the officer inflicted no constitutional harm. If a person has suffered no constitutional injury at the hands of the individual police officer, the fact that the departmental regulations might have *authorized* the use of constitutionally excessive force is quite beside the point.") (original emphasis).

[3] *See* Cazares Fourth Amended Complaint at Law ("Cazares Complaint"), Count I, ¶¶ 4-6; Manzera Fourth Amended Complaint at Law ("Manzera Complaint"), Count I, ¶¶ 3-4, 6. The Cazares Complaint is attached hereto as Exhibit A; the Manzera Complaint is attached as Exhibit B.

[4] *See* Cazares Complaint, Count I, ¶ 9; Manzera Complaint, Count I, ¶ 8.

Both Plaintiffs assert the following claims under Illinois state law: (1) claims against Frugoli under the Wrongful Death Act and Illinois Survival Act;[7] (2) Dram Shop Act claims against the owners and managers of Dugan's Tavern;[8] and (3) claims of negligence and wilful and wanton conduct against the City of Chicago.[9] Plaintiff Manzera and Plaintiff Cazares also bring *Monell* claims against the City.[10] For the reasons explained below, the City asks this Court to dismiss the *Monell* claims brought by both Plaintiffs.

Argument

THIS COURT SHOULD DISMISS THE FEDERAL CLAIMS OF BOTH PLAINTIFFS BECAUSE NEITHER PLAINTIFF ALLEGES FACTS THAT GIVE RISE TO A CONSTITUTIONAL VIOLATION, AND A CONSTITUTIONAL VIOLATION IS THE NECESSARY PREDICATE FOR SECTION 1983 MUNICIPAL LIABILITY.

To prevail on a Section 1983 claim against a municipality, a plaintiff must prove: (1) a violation of his constitutional rights; (2) an injury; and (3) that the injury and violation of rights were directly caused by the City's own action or inaction that carried the requisite degree of fault.[11] Thus, Defendant City of Chicago cannot be liable under *Monell* if Plaintiffs fail to allege a cognizable constitutional injury.[12] Here, both Plaintiffs allege that their decedents' substantive due process right to bodily integrity was violated by various "wrongful acts and/or omissions" of Defendant City of Chicago.[13] However, neither Plaintiff alleges facts that give rise to a substantive due process violation; hence, neither Plaintiff can satisfy at the pleading stage the threshold requirement for Section 1983 municipal liability. Accordingly, both Plaintiffs fail to state a claim against Defendant City of Chicago for which relief may be granted, and their *Monell* claims should be dismissed.

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[5] *See* Cazares Complaint, Count I, ¶ 8c) and Count III, ¶¶ 9, 16; Manzera Complaint, Count I, ¶ 7(a) and Count III, ¶¶ 3, 10.

[6] *See* Cazares Complaint, Count VI, ¶¶ 2, 4; Manzera Complaint, Count IV, ¶¶ 2, 4.

[7] *See* Cazares Complaint, Counts I-II; Manzera Complaint, Counts I-II.

[8] *See* Cazares Complaint, Counts III-V; Manzera Complaint, Counts III..

[9] *See* Cazares Complaint, Counts VI and XII [sic]; Manzera Complaint, Counts IV-V.

[10] *See* Cazares Complaint, Count VIII; Manzera Complaint, Count VI.

It is well-established in Section 1983 jurisprudence that "liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process."[14] But "negligently inflicted harm" is precisely the kind of harm that was imposed upon Plaintiffs' decedents. The constitutional injury purportedly suffered by both of Plaintiffs' decedents was the result of a motor vehicle accident caused by Frugoli when he was driving while intoxicated – hardly the kind of conduct that can plausibly be characterized as intentional. And in the absence of intent, courts have properly dismissed Section 1983 actions based on substantive due process claims.

In *County of Sacramento v. Lewis*, the Supreme Court held there was no violation of the Fourteenth Amendment's guarantee of substantive due process in a high-speed pursuit chase aimed at apprehending a motorcyclist because "*only a purpose to cause harm* unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience necessary for a due process violation."[15] *Steen v. Myers* also involved a high-speed pursuit of a motorcyclist by a police officer involving facts similar to those in *Lewis*.[16] There, the Seventh Circuit affirmed the decision of the district court to grant summary judgment to the officer on the grounds that he did not violate the motorcyclist's right to due process, despite evidence that the officer may have harbored animosity toward the motorcyclist preceding the chase. According to the Court of Appeals, "[e]ven taking the facts and inferences in the light most favorable to the appellees, [Officer] Myers's behavior does not shock the conscience as the Court has established that standard in *Lewis*."[17] The court concluded that

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[11] *See Board of County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397, 403–05 (1997).

[12] *See, e.g.*, *Houskins v. Shehan*, 549 F.3d 480, 493 (7th Cir.2008) (where plaintiff fails to establish deprivation of a constitutional right, *Monell* claims must also fail); *Treece v. Hochstetler*, 213 F.3d 346 (7th Cir. 2000) (citing *City of Los Angeles v. Heller*, 475 U.S. 796, 799 (1986)).

[13] *See* Cazares Complaint, Count VIII, ¶ 19; Manzera Complaint, Count VI, ¶ 19.

[14] 523 U.S. at 849.

> The Supreme Court has set the bar awfully high in pursuing a Fourteenth Amendment claim that arises out of a police chase. There might be questions on this record as to whether Myers was negligent, reckless, or even deliberately indifferent to the safety of [the motorcyclist and his passenger], but under the standard set forth in *Lewis* those questions are reserved to the state courts and the law of tort. Under a standard that requires conscience-shocking behavior and *an intent to cause harm unrelated to a legitimate government interest*, the district court was correct that the defendants were entitled to judgment as a matter of law on the claims under 42 U.S.C. § 1983.[18]

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[15] *Id.* at 836 (emphasis added). *See also id.* at 849 ("conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level"); *Bublitz v. Cottey*, 327 F.3d 485, 491 (7th Cir. 2003) (holding that liability under the "shock the conscience" standard generally requires "deliberate action intended to harm another"); *Schaefer v. Goch*, 153 F.3d 793, 798 (7th Cir. 1998) ("the *sine qua non* of liability in cases analogous to high-speed chases [with no intent to harm suspects physically or to worsen their legal plight] . . . is 'a purpose to cause harm'".) (citing *Lewis*).

[16] *Steen v. Myers*, 486 F.3d 1017, 1024 (7th Cir. 2007).

[17] *Id.*

[18] *Id.* at 1025 (emphasis added).

As part of another line of cases decided before *Lewis*, the Seventh Circuit in *Hill v. Shobe* held that the fact that an on-duty police officer killed the plaintiff's decedent after he ran a red light and struck the decedent's car failed to rise to the level of a violation of substantive due process.[19] Consistent with Lewis, the Court of Appeals reasoned that "*unintended loss of life resulting from a state employee's lack of due care* does not implicate the due process clause."[20] And as recently as 2005, the Seventh Circuit relied on *Hill* to declare that a vehicular accident caused by a correctional officer did not support a substantive due process claim.[21]

If there is any doubt that the motor vehicle accident caused by Frugoli's driving while drunk constitutes negligent conduct, it is completely eliminated by the pleadings of both Plaintiffs. Plaintiff Cazares styles Counts I and II of his Fourth Amended Complaint at Law – the two counts that are directed at Defendant Frugoli – as "**NEGLIGENCE**–WRONGFUL DEATH–JOSEPH FRUGOLI" and "**NEGLIGENCE**–SURVIVAL ACT–JOSEPH FRUGOLI," respectively.[22] In addition, Plaintiff Cazares alleges in both Counts I and II that "[o]n April 10, 2009, Defendant, JOSEPH FRUGOLI, committed one or more of the following *negligent* acts or omissions:

a. Proceeded at a speed which was greater than reasonable and proper with regards to traffic conditions and the use of the highway, or which endangered the safety of persons or property, in violation of 625 ILCS 5/11-601(a);

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[19] *See Hill v. Shobe*, 93 F.3d 418, 421 (7th Cir. 1996).

[20] *Id.* (emphasis added).

[21] *See Alexander v. Perrenoud*, 134 Fed. Appx. 938, 939 (7th Cir. 2005) (holding that officer's *negligence* in backing into another car did not violate the substantive due process clause).

[22] *See* headings to Counts I and II of Cazares Complaint (emphasis added).

b. Failed to reduce speed to avoid colliding with other vehicle(s) on the roadway in violation of 625 ILCS 5/11-601(a);

c. Operated a motor while under the influence of alcohol in violation of 625 ILCS 5/11-501;

d. Failed to keep a proper lookout; and

e. Struck the rear of the vehicle operated by Andrew Cazares."[23]

And Plaintiff Manzera alleges in Count I and re-alleges in Count II that "[a]t the time and place aforesaid, notwithstanding his aforesaid duties, the Defendant, JOSEPH FRUGOLI, was then and there guilty of one or more of the following acts and/or omissions:

a. *Carelessly and negligently* driving under the influence of alcohol, other drug or drugs, intoxicating compound or compounds or any combination thereof, in violation of 625 ILCS 5/11-501 (2009);

b. Operated and controlled said vehicle at a rate of speed greater than was reasonable and proper, having regard for the traffic and the use of the way, contrary to and in violation of 625 ILCS 5/11-601 (2009);

c. *Carelessly and negligently* followed another vehicle more closely than was reasonable and prudent, without due regard for the speed of such vehicles, contrary to and in violation of 625 ILCS 5/11-710 (2009);

d. Owned, operated, maintained and controlled said vehicle without having brakes adequate to control the movement and to stop and hold said vehicle, contrary to and in violation of 625 ILCS 5/12-301 (2009);

e. *Carelessly and negligently* failed to exercise due care to give warning by sounding the horn, contrary to and in violation of 625 ILCS 5/12-601 (2009);

f. *Carelessly and negligently* failed to obey traffic laws, contrary to and in violation of 625 ILCS 5/11-202 (2009);

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[23] Cazares Complaint, Count I, ¶ 8(a-e) and Count II, ¶ 8(a-e) (emphasis added).

g. Failed to keep a safe and proper lookout so as to avoid striking the vehicle operated by Plaintiff."[24]

"Negligently inflicted harm" cannot be the basis for a deprivation of constitutional due process. Yet the Complaints of both Plaintiffs sound explicitly and unambiguously in negligence as to the conduct of Defendant Frugoli. Consequently, both Plaintiffs have pleaded themselves out of federal court.

Conclusion

Plaintiff Manzera and Plaintiff Cazares in their most recent amended complaints assert federal claims against the City of Chicago under a *Monell* theory of liability. As part of these claims, Plaintiffs allege that their decedents suffered deprivations of their substantive due process right to bodily integrity. However, both Plaintiffs allege that Defendant Frugoli acted negligently when the vehicle he was driving struck the decedents' vehicle, causing injuries that led to their deaths, and negligent conduct does not give rise to a violation of constitutional due process. And without a cognizable constitutional injury, Plaintiffs cannot proceed against the City under *Monell*. Accordingly, pursuant to Fed. R. Civ. P. 12(b)(6), this Court should dismiss with prejudice the federal claims of both Plaintiff Manzera and Plaintiff Cazares for failure to state a claim upon which relief can be granted, and, further, should remand the remaining state law claims to state court.

[24] Manzera Complaint, Count I, ¶ 7(a-g) and adopted and re-alleged in Count II (emphasis added).

Respectfully submitted,

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